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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,078	04/12/2005	Kenneth M. Gainey	080590	2571

23696 7590 09/07/2010
QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

EXAMINER

PHU, SANH D

ART UNIT	PAPER NUMBER
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2618

NOTIFICATION DATE	DELIVERY MODE
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09/07/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

us-docketing@qualcomm.com

Office Action Summary	Application No. 10/531,078	Applicant(s) GAINEY ET AL.	
	Examiner SANH D. PHU	Art Unit 2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21, 30-41 and 51 is/are allowed.
- 6) ☒ Claim(s) 22 and 42 is/are rejected.
- 7) ☒ Claim(s) 23-29 and 43-49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/18/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the Amendment filed on 05/18/10.

Accordingly, claims 1-49 and 51 are currently pending; and claim 50 is canceled.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 22 and 42 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-36 of copending Application No. 10/516,327.

-Regarding claim 22, claims 1-36 of copending Application No. 10/516,327 teaches a method for frequency translation in a frequency translating repeater, the method (see claims 1, 8 and 9 of Application No. 10/516,327) comprising:

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procedure (comprising "signal detector") of detecting if a signal is present on one of two frequency channels associated with the frequency translating repeater;

procedure (comprising "frequency converter") of changing a frequency channel associated with the signal from the one of the two frequency channels to an other of the two frequency channels; and

procedure (comprising "delay circuit") of adding a delay to the signal, wherein in light of the specification, page 10, of Application No. 10/516,327), the delay has a sufficient time delay to compensate for processing/transmitting time of elements (comprising a detector, filters, ADC and so on) of a detection and control unit, (said delay considered here equivalent with the limitation " a delay to the signal to equivalent to a signal detection interval and a transmitter configuration interval").

-Regarding claim 42, claims 1-36 of copending Application No. 10/516,327 teaches a frequency translating repeater, the repeater (see claims 1, 8 and 9 of Application No. 10/516,327) comprising:

means (comprising "signal detector") of detecting if a signal is present on one of two frequency channels associated with the frequency translating repeater;

means (comprising "frequency converter") of changing a frequency channel associated with the signal from the one of the two frequency channels to an other of the two frequency channels; and

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means (comprising "delay circuit") of adding a delay to the signal, wherein in light of the specification, page 10, of Application No. 10/516,327), the delay has a sufficient time delay to compensate for processing/transmitting time of elements (comprising a detector, filters, ADC and so on) of a detection and control unit, (said delay considered here equivalent with the limitation " a delay to the signal to equivalent to a signal detection interval and a transmitter configuration interval").

Allowable Subject Matter

3. Claims 1-21, 30-41 and 51 are allowed.
4. Claims 23-29 and 43-49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed 05/18/10 have been fully considered.
 - As results, the previous 102 rejections have been withdrawn; and claims 1-21, 23-41, 43-49 and 51 are indicated allowable set forth above.
 - The previous rejections to claims 22 and 42, under Double Patenting, are still maintained since the applicant has not filed a corresponding Terminal Disclaimer to overcome the rejections.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SANH D. PHU whose telephone number is (571)272-7857. The examiner can normally be reached on M-Fr from 8:00-16:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on (571) 272-7882. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sanh D Phu/
Primary Examiner
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